

FILE COPY

STATE OF WISCONSIN BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE	:	
APPLICATION FOR A LICENSE	:	FINAL DECISION
TO PRACTICE MEDICINE AND SURGERY OF	:	AND ORDER
	:	Case No. LS-9101151-MED
RICHARD W. SUNDLING, M.D.,	:	
APPLICANT.	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 1.04, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Richard Sundling, M.D.
14055 Red Barn Circle
Chelsea, MI 48118

Medical Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

The rights of a party aggrieved by this decision to petition the board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

A Class 1 proceeding was conducted in this matter before Administrative Law Judge John N. Schweitzer on February 4, 1991. Mr. Schweitzer submitted his Proposed Decision to the board on February 8, 1991, and the board considered the matter at its meeting of February 21, 1991.

Based upon the entire record of this case, the Medical Examining Board makes the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Applicant, Richard W. Sundling, M.D., holds a limited license to practice medicine in the State of Michigan. This license was reinstated on September 20, 1989, after having been summarily suspended on July 16, 1986. The limitations on his license are that:

- "Applicant may practice medicine only at a substance abuse treatment center";

- "Applicant shall not obtain, possess, prescribe, dispense or administer any controlled substances";
- "Applicant's supervising physician shall file quarterly reports with the Board"; and
- "Applicant shall participate in the Medical Society's impaired physicians program in Applicant's state of employment. ..." (exhibit #7).

2. Prior to the 1989 reinstatement, the history of Dr. Sundling's Michigan medical license includes the following relevant actions, summarized from the record:

- June 1962 - license granted (exhibit #2);
- October 1975 - license limited, based on self-administration of demerol (exhibit #1);
- December 1976 - license revoked, based on diverting demerol for personal use (exhibit #2);
- April 1978 - limited license granted (exhibit #3);
- September 1979 - license summarily suspended, and finally revoked in February 1980 based on self-administration of Sublimaze (exhibit #4);
- September 1984 - limited license granted (exhibit #5);
- July 1986 - license revoked, based on self-administration of demerol (exhibit #6).

3. The history of Dr. Sundling's treatment for drug abuse is as follows, summarized from the record:

- following the October 1975 limitation of his license, psychiatric treatment with a professor at the University of Michigan;
- following the December 1975 revocation of his license, a program consisting of outpatient treatment through Octagon House, a drug treatment center;
- following the September 1979 summary suspension and February 1980 revocation, a 30-day inpatient program at Brighton Hospital treatment center, followed by attendance at AA meetings;
- following the July 1986 revocation, the Talbott Recovery System, a four-month program at a residential treatment center in Atlanta, Georgia, followed by continued attendance at AA meetings and participation in the Michigan Impaired Physicians Program.

4. Dr. Sundling currently is in the Michigan Impaired Physicians Program, attends AA meetings, and continues to submit randomly scheduled urine samples for drug screening to Dr. Charles Gehrke of the Center for Mental Health and Chemical Dependency in Ann Arbor, Michigan.

5. Dr. Sundling has remained drug-free since late 1986.

6. On August 1, 1990, Dr. Sundling applied for a license to practice medicine and surgery in Wisconsin. Dr. Sundling has satisfied education and postgraduate requirements for licensure. Dr. Sundling also achieved passing grades in examinations required for licensure. Dr. Sundling has not been convicted of a felony or misdemeanor, or of an offense substantially related to his license, other than an arrest for operating a motor vehicle while intoxicated.

7. Dr. Sundling is presently unemployed and has not been employed since 1986. He has applied for a part-time position reviewing records at an out-patient treatment center in Romulus, Michigan, but has otherwise been unable to locate employment which does not require prior training or certification. The limited license issued to Dr. Sundling by the state of Michigan requires that he practice only in a substance abuse treatment center.

8. A fellowship program at DePaul Hospital in Milwaukee, Wisconsin has been offered to Dr. Sundling (exhibit #9) and is still available to him. It is a one-year clinical education and practice program, preparing histories and physicals, and attending to the medical needs of patients in a substance abuse program, which would qualify him for additional employment in Michigan.

9. Dr. Sundling has attended at least 40 hours of category 1 Continuing Medical Education training and 10 hours of additional training annually since his revocation in 1986 (exhibit #13).

10. With the exception of one civil suit from which he was removed as a party early in the proceedings, Dr. Sundling has never been named in a malpractice action.

11. There is no evidence that any patient has ever been harmed by Dr. Sundling's unprofessional conduct.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction of this matter under sec. 448.02(1), Wis. Stats., sec. 448.06, Wis. Stats., and ch. MED 1, Wis. Adm. Code.

2. The evidence presented at the denial proceeding forms a sufficient basis for granting the Applicant a limited form of license, such as a temporary educational permit.

ORDER

NOW, THEREFORE, IT IS ORDERED that the application of Richard W. Sundling for a license to practice medicine and surgery in Wisconsin be, and hereby is, denied.

IT IS FURTHER ORDERED that the application of Richard W. Sundling, M.D., for a temporary educational permit be granted, and Dr. Sundling is hereby granted a temporary educational permit imposing the following terms and conditions:

1. Dr. Sundling shall not obtain or possess a U.S. Drug Enforcement Administration Registration which would allow him to prescribe, dispense, administer or possess controlled substances.

2. Dr. John A. Palese, Medical Director of DePaul Hospital Addiction and Mental Health Center, Milwaukee, Wisconsin shall be Dr. Sundling's supervising therapist throughout the full term of this limited license. In the event that Dr. Palese is unable or unwilling to serve as supervising therapist, the Medical Examining Board shall, in its sole discretion, select a successor supervising therapist.

3. Dr. Sundling shall continue in and fully participate in all components of the DePaul treatment program, as his supervising therapist shall determine to be appropriate for his rehabilitation. Dr. Sundling shall comply with all recommendations of his supervising therapist for inpatient or outpatient treatment or both, and shall comply with all aspects of the treatment program as recommended by his supervising therapist. All costs of the recovery program shall be the responsibility of Dr. Sundling or his health insurer.

4. Dr. Sundling shall abstain from any and all personal use of controlled substances as defined in Wis. Stats. sec. 161.01(4), except when necessitated by a legitimate medical condition and then only with the prior approval of the supervising therapist.

5. Dr. Sundling shall abstain from any and all personal use of alcohol.

6. Dr. Sundling shall report all medications and drugs, over-the-counter or prescription, taken by him to his supervising therapist with 24 hours of ingestion or administration and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs for him. The terms of this subparagraph shall not be deemed to modify or negate Dr. Sundling's obligations as set forth in subparagraph (4) of this Order.

7. Dr. Sundling shall supply, on at least a weekly basis, random monitored urine or blood specimens within 24 hours of a request for said specimen made by the supervising therapist or his designee. The supervising therapist or his designee shall determine whether the specimen shall be a

urine specimen or a blood specimen or both. Collection of these specimens shall be observed and verified by persons designated by the supervising therapist. Collection and all testing of specimens shall be the financial responsibility of Dr. Sundling or his health insurer.

8. If any urine or blood specimen is positive or suspected positive for any controlled substance or alcohol, the specimen shall be re-examined using gas chromatography spectrometry as a confirmatory test.

9. If any urine or blood specimen is positive or suspected positive for any controlled substance or alcohol, Dr. Sundling shall promptly submit to additional tests and examinations as the supervising therapist or his designee shall determine as appropriate to clarify or confirm the positive or suspected positive urine or blood test results.

10. The supervising therapist shall submit formal written reports to the Wisconsin Medical Examining Board every 90 days commencing 90 days after the date of this Order. The reports shall assess Dr. Sundling's progress in his rehabilitation program and set forth the results of the random urine and blood screens. Dr. Sundling shall be responsible for the timely filing of these reports. The supervising therapist and Dr. Sundling shall report immediately to the Wisconsin Medical Examining Board any suspected violation of this Order including, but not limited to, any positive or suspected positive blood or urine screens.

11. Dr. Sundling shall provide and keep on file, with his supervising therapist and all treatment facilities and personnel, current releases which comply with state and federal laws authorizing release of all of his medical and treatment records and reports to the Wisconsin Medical Examining Board and permit his supervising therapist and his treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation with the Wisconsin Medical Examining Board. Copies of said releases shall be filed simultaneously with the Wisconsin Medical Examining Board.

12. Dr. Sundling shall appear before the Wisconsin Medical Examining Board at least semi-annually to review the progress of his treatment and rehabilitation. It shall be Dr. Sundling's obligation to contact the Board office and schedule these semi-annual appearances. Dr. Sundling may petition the Wisconsin Medical Examining Board for modification of the terms of his limited temporary educational permit and the Wisconsin Medical Examining Board shall consider Dr. Sundling's petition at the time it meets with Dr. Sundling to review the progress of his rehabilitation. Denial of the petition, in whole or in part, shall not be considered a denial of a limited temporary educational permit within the meaning of Wis. Stats. sec. 227.01(3)(a) and Dr. Sundling shall not have a right to any further hearings or proceedings on any denial, in whole or in part, of his petition for modification of his limited temporary education permit.

13. Violation of any term or condition of this Order may constitute grounds for revocation of Dr. Sundling's limited temporary educational permit to practice medicine in the state of Wisconsin. Should the Board determine that there is probable cause to believe that Dr. Sundling has violated the terms of this Order, the Board may order that Dr. Sundling's limited temporary educational permit be summarily suspended pending investigation of the alleged violation.

EXPLANATION OF VARIANCE

The board has adopted the hearing examiner's Findings of Fact and Conclusions of Law, but has varied from the recommended Order in granting Dr. Sundling a limited temporary educational permit imposing all appropriate limitations, including treatment requirements, rather than granting a limited permit imposing practice limitations and requiring that treatment be provided within the context of the Impaired Professional Procedure. Where, as here, confidentiality of Dr. Sundling's participation in a treatment program is not a major consideration, the board deems incorporation of all applicable limitations into the limited license to be the more efficacious procedure, as well as the procedure which may permit more expeditious board action should Dr. Sundling's treatment prove unsuccessful.

Dated this 5 day of March, 1991.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

By:

Michael P. Mehr

Michael P. Mehr, M.D.

Secretary

WRA:kcb
BDLS-1165

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Medical Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Medical Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Medical Examining Board.

The date of mailing of this decision is March 12, 1991.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmation, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

BEFORE THE STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF THE APPLICATION	:	
FOR A LICENSE TO PRACTICE	:	
MEDICINE AND SURGERY OF	:	NOTICE OF FILING
	:	PROPOSED DECISION
RICHARD W. SUNDLING, M.D.,	:	LS9101151MED
APPLICANT.	:	

TO: Richard W. Sundling, M.D.
14055 Red Barn Circle
Chelsea, MI 48118

John R. Zwieg
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708


PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Medical Examining Board, Room 176, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before February 18, 1991. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Medical Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together, with any objections and arguments filed, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 8th day of February, 1991.



John N. Schweitzer
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF	:	
THE APPLICATION FOR A LICENSE	:	
TO PRACTICE MEDICINE AND SURGERY OF	:	PROPOSED DECISION
	:	Case No. LS-9101151-MED
RICHARD W. SUNDLING, M.D.,	:	
APPLICANT.	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 1.04, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Richard Sundling, M.D.
14055 Red Barn Circle
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Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

POSTURE OF CASE

1. On August 1, 1990, Dr. Sundling filed an application for a license to practice medicine and surgery in Wisconsin. The Medical Examining Board considered the matter at its meeting on October 18, 1990, denied the application, and issued the following order:

On August 1, 1990, Dr. Sundling filed his application for a license to practice medicine and surgery in Wisconsin. On his application, Dr. Sundling indicated that action had been taken against his license in the State of Michigan, that he has received treatment for drug or alcohol abuse, that his hospital privileges have been limited or removed, and that the Drug Enforcement Administration has withdrawn his DEA number. The board considered the matter at its meeting of October 18, 1990.

Based on all information of record herein, the board orders as follows:

NOW, THEREFORE, IT IS ORDERED that the application of Richard W. Sundling, M.D., for a license to practice medicine and surgery in Wisconsin be, and hereby is, denied.

2. The Board's Order contained a Discussion, which concluded as follows:

Dr. Sundling's repeated relapses following relicensure over the past 15 years represents a pattern of conduct which nothing in this record establishes has been broken. At such time that Dr. Sundling is able to demonstrate that he has practiced under his limited license for sufficient time to indicate a successful and ongoing recovery, and at such time that the Michigan board has deemed it appropriate to significantly reduce or eliminate the restrictions on his license based on that recovery, this board will be pleased to reconsider Dr. Sundling's application for licensure. For now, however, Dr. Sundling's application must be denied.

3. The Board's Order Denying the Application was dated October 31, 1990. In a letter dated November 26, 1990 and received November 29, 1990, Dr. Sundling requested a denial proceeding under sec. 227.42, Wis. Stats. and ch. RL 1, Wis. Adm. Code. A denial proceeding ("hearing") was scheduled for February 4, 1991. Notice of Hearing was prepared by the Division of Enforcement and served by certified mail on Dr. Sundling, who received it on January 17, 1991.

4. All time limits and notice and service requirements having been met, the denial proceeding was held as scheduled on February 4, 1991. Dr. Sundling appeared in person, without an attorney, and the Medical Board was represented by Attorney John Zwieg of the Department of Regulation and Licensing's Division of Enforcement. That denial proceeding forms the basis for this Proposed Order.

FINDINGS OF FACT

1. The Applicant, Richard W. Sundling, M.D., holds a limited license to practice medicine in the State of Michigan. This license was reinstated on September 20, 1989, after having been summarily suspended on July 16, 1986. The limitations on his license are that

- "Applicant may practice medicine only at a substance abuse treatment center";
- "Applicant shall not obtain, possess, prescribe, dispense or administer any controlled substances";
- "Applicant's supervising physician shall file quarterly reports with the Board"; and
- "Applicant shall participate in the Medical Society's impaired physicians program in Applicant's state of employment. ..." (exhibit #7).

2. Prior to the 1989 reinstatement, the history of Dr. Sundling's Michigan medical license includes the following relevant actions, summarized from the record:

- June 1962 - license granted (exhibit #2);
- October 1975 - license limited, based on self-administration of demerol (exhibit #1);
- December 1976 - license revoked, based on diverting demerol for personal use (exhibit #2);
- April 1978 - limited license granted (exhibit #3);
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- September 1984 - limited license granted (exhibit #5);
- July 1986 - license revoked, based on self-administration of demerol (exhibit #6).

3. The history of Dr. Sundling's treatment for drug abuse is as follows, summarized from the record:

- following the October 1975 limitation of his license, psychiatric treatment with a professor at the University of Michigan;
- following the December 1976 revocation of his license, a program consisting of outpatient treatment through Octagon House, a drug treatment center;
- following the September 1979 summary suspension and February 1980 revocation, a 30-day inpatient program at Brighton Hospital treatment center, followed by attendance at AA meetings;
- following the July 1986 revocation, the Talbott Recovery System, a four-month program at a residential treatment center in Atlanta, Georgia, followed by continued attendance at AA meetings and participation in the Michigan Impaired Physicians Program.

4. Dr. Sundling currently is in the Michigan Impaired Physicians Program, attends AA meetings, and continues to submit randomly scheduled urine samples for drug screening to Dr. Charles Gehrke of the Center for Mental Health and Chemical Dependency in Ann Arbor, Michigan.

5. Dr. Sundling has remained drug-free since late 1986.

6. On August 1, 1990, Dr. Sundling applied for a license to practice medicine and surgery in Wisconsin. Dr. Sundling has satisfied education and postgraduate requirements for licensure. Dr. Sundling also achieved passing grades in examinations required for licensure. Dr. Sundling has not been convicted of a felony or misdemeanor, or of an offense substantially related to his license, other than an arrest for operating a motor vehicle while intoxicated.

7. Dr. Sundling is presently unemployed and has not been employed since 1986. He has applied for a part-time position reviewing records at an out-patient treatment center in Romulus, Michigan, but has otherwise been unable to locate employment which does not require prior training or certification. The limited license issued to Dr. Sundling by the state of Michigan requires that he practice only in a substance abuse treatment center.

8. A fellowship program at DePaul Hospital in Milwaukee, WI has been offered to Dr. Sundling (exhibit #9) and is still available to him. It is a one-year clinical education and practice program, preparing histories and physicals, and attending to the medical needs of patients in a substance abuse program, which would qualify him for additional employment in Michigan.

9. Dr. Sundling has attended at least 40 hours of category 1 Continuing Medical Education training and 10 hours of additional training annually since his revocation in 1986 (exhibit #13).

10. With the exception of one civil suit from which he was removed as a party early in the proceedings, Dr. Sundling has never been named in a malpractice action.

11. There is no evidence that any patient has ever been harmed by Dr. Sundling's unprofessional conduct.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction of this matter under sec. 448.02(1), Wis. Stats., sec. 448.06, Wis. Stats., and ch. MED 1, Wis. Adm. Code.

2. The evidence presented at the denial proceeding forms a sufficient basis for granting the Applicant a limited form of license, such as a temporary educational permit.

ORDER

NOW, THEREFORE, IT IS ORDERED that the application of Richard W. Sundling, M.D. for a license to practice medicine and surgery in the State of Wisconsin is denied. However, the Applicant is granted a temporary educational permit under sec. 448.04(1)(c), Wis. Stats. and ch. MED 5, Wis. Adm. Code. This temporary educational permit shall carry the following limitations:

- the temporary educational permit is issued to allow the applicant to accept a one-year fellowship at DePaul Hospital in Milwaukee, Wisconsin, and his practice of medicine and surgery is limited to that facility;
- the temporary educational permit shall not allow the applicant to prescribe narcotics or controlled substances;
- the temporary educational permit expires one year from the date of issuance, but for good cause may be renewed; and
- as a condition of the issuance of the temporary educational permit, and for as long as the temporary educational permit continues, the applicant shall participate in the Wisconsin Impaired Professionals Procedure under ch. RL 7, Wis. Adm. Code.

OPINION

Sec. 448.05, Wis. Stats. sets forth the requirements which must be met by an applicant before a license may be granted to practice medicine and surgery in Wisconsin. Dr. Sundling's application shows that he meets the three requirements in subsections (a), (b), and (c), as follows:

- Sec. 448.05(1)(a) requires that the applicant have no arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Wis. Stats. Those sections in ch. 111 essentially say that an arrest or conviction record may be considered only if the offense was a felony, a misdemeanor, or an offense substantially related to the license. Dr. Sundling's record of one arrest for operating a motor vehicle while intoxicated does not disqualify him under this section.
- Sec. 448.05(1)(b) requires that the applicant meet specific education and postgraduate requirements as set forth in sec. 448.05(2). Dr. Sundling meets those requirements.
- Sec. 448.05(1)(c) requires that the applicant achieve a passing grade in the examinations required by sec. 448.05(2). Dr. Sundling meets that requirement.

Subsection (d) requires that the applicant be found qualified by three-fourths of the members of the board. Based on Dr. Sundling's initial application, and the certified documents received from the State of Michigan regarding the actions taken against his license, Dr. Sundling failed this requirement.

The basis for the Board's decision under sec. 448.05 is not set forth in that section, but instead in sections 448.06(2) and (1m). Sec. 448.06(2) states
The board may deny an application for any class of license or certificate on the basis of unprofessional conduct on the part of the applicant, failure to possess the education and training required for that class of license or certificate for which application is made, or failure to achieve a passing grade in the required examinations (emphasis added).

Sec. 448.06(1m) states

If the board finds, based upon considerations of public health and safety, that the applicant has not demonstrated adequate education, training or performance on examinations or in past practice, ... the board may grant the applicant a limited license" (emphasis added).

In this case, therefore, the question is whether Dr. Sundling has demonstrated either unprofessional conduct or inadequate performance, or both, in his past practice. Clearly he has, as evidenced by the disciplinary actions in the state of Michigan based on Dr. Sundling's diversion and self-administration of drugs. Such activities would be considered unprofessional conduct and grounds for discipline if Dr. Sundling were licensed in Wisconsin, and can certainly be considered inadequate performance.

Under sec. 227.01(3)(a), Wis. Stats., the Board acts with substantial discretionary authority in its decision to grant or deny a license, and therefore, if the applicant challenges that action, he or she bears the burden

of showing that the Board's action was an abuse of discretion, i.e. that the Board either (1) failed fairly to consider the facts before it, or (2) misapplied the statutes and rules which should govern its decision. Class 1 denial hearings also serve another purpose, however, which is to provide an applicant with a forum for a complete and thorough presentation of evidence which may not have been submitted to the Board for its initial decision. After such a hearing, the Administrative Law Judge could direct the applicant to submit a new application to the Board with all the evidence which was developed in the denial hearing, but for administrative efficiency, rather than start the procedure anew, the Administrative Law Judge should consider such additional evidence as was unavailable to the Board, and may if appropriate propose a decision and order which differs from the Board's original decision.

Dr. Sundling's initial application (exhibit 8) did not indicate his purpose in applying for licensure. After his application was denied, Dr. Sundling requested a hearing on the denial, and in that letter he indicated that his request was for the limited purpose of accepting a one-year fellowship at DePaul Hospital in Milwaukee. His need for a license is therefore limited in duration (approximately one year), location of practice (in DePaul Hospital only), and in scope of practice (as required for purposes of the fellowship.)

In this denial proceeding, Dr. Sundling supplemented the record regarding his past unprofessional conduct with his own oral testimony and with written testimonials from medical professionals who know him from treatment and work settings. In particular, he presented the following evidence:

- a. A letter dated January 22, 1991 from Dr. Charles Gehrke, the physician who has monitored Dr. Sundling's urine screens, stating that Dr. Sundling submitted random urine specimens to him over a four-year period for drug screening, that they started on a weekly basis and have become less frequent. Dr. Gehrke states "to the best of my abilities that Dr. Sundling has been drug free since I first made contact with him in December of 1986." (exhibit #10).
- b. A letter dated August 28, 1990 from Dr. James Blevins, who was Dr. Sundling's primary care physician when he was in the Talbott Recovery System, stating that Dr. Sundling "has remained in close contact with me on a personal and professional basis since his discharge from active treatment, and I have been extremely impressed with continued motivation and commitment to maintaining his program of recovery. I feel his prognosis for continued sobriety is excellent at this time" (exhibit #11).
- c. Dr. Sundling's own statement under oath that he has abstained from drugs and alcohol since his treatment in 1986. The record contains no evidence to contradict that statement, and therefore reflects a period of more than four years during which he has remained drug-free, rather than the period of a little more than one year suggested by his 1989 reinstatement.
- d. A reasonably well-articulated explanation of why the treatment he received through the Talbott Recovery System was more effective than the treatment he received through the psychiatry professor, the Octagon House outpatient program, and the Brighton Hospital 30-day inpatient program.

- e. His own testimony that no patient has ever suffered detectable negative effects from his drug use. The record contains no evidence to dispute that claim.
- f. A letter dated January 17, 1991 from A. G. Fleurquin, M.D., stating that he found Dr. Sundling to be "a mature and caring physician, with an excellent medical background. He was superbly trained in the specialty, had a great personality and had excellent relations with his patients and colleagues" (exhibit #12). Following the September 1979 summary suspension and February 1980 revocation of his license, Dr. Sundling took a residency in radiation oncology, and joined Dr. Fleurquin in his practice as a radiologist. It was Dr. Fleurquin who became aware of Dr. Sundling's use of demerol in July 1986 and who took steps which led to the most recent revocation.
- g. An explanation of the importance of the fellowship program at DePaul Hospital to his own vocational rehabilitation, since it would give him a prospect of returning to the practice of medicine.
- h. A statement that he understands and accepts the limits which could, and likely would, be placed on any license issued to practice in Wisconsin.

The above evidence is available in the record for the Board's consideration when it reviews this proposed Decision. With regard to his own testimony, Dr. Sundling was a credible witness.

The above evidence:

- addresses the Board's specific concern regarding the length of time Dr. Sundling had remained drug-free, and shows that the period now extends back to 1986, rather than to the time when he was granted another limited license in mid-1989;
- offers a basis for believing that his most recent treatment will be more effective than the previous three;
- clarifies the extent to which public health and safety have been placed in jeopardy in the past by his actions, and affirms that his unprofessional conduct appears never to have had a detectable negative effect on patient care;
- demonstrates that he is an individual who can make a valuable contribution to the public good if he is allowed to practice and if he is able to remain drug-free; and
- explains the importance to him, for his prospects of returning to the practice of medicine, of a license in Wisconsin to allow him to accept the fellowship program at DePaul Hospital, which can be limited in scope and duration, as well as limited by participation in the Impaired Professionals Procedure.

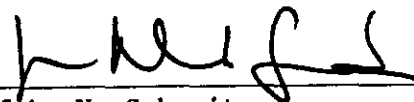
Although Dr. Sundling has not practiced medicine since July 1986, he has satisfied his Continuing Medical Education requirement in Michigan. Michigan requires a greater number of hours than does Wisconsin, and although the classes he attended may not have been approved in advance by this Board as required by s. MED 13.03, Wis. Adm. Code, his application for a license should not be denied for any failure to satisfy the continuing medical education provisions of ch. MED 13, Wis. Adm. Code.

This decision is based on a balancing of the broad public interest in assuring that the services of medical professionals will be performed by competent and unimpaired practitioners, versus Dr. Sundling's personal interest in pursuing a livelihood. Based on the information available to it, the Board's decision clearly struck the proper balance, as it did not appear that the public's health and safety would be sufficiently protected by granting a license to Dr. Sundling. Much of the additional evidence which was developed in the denial proceeding weighs in the balance on the side of granting Dr. Sundling a strictly limited form of medical license or permit, though on the other side of that balance remain a serious concern about Dr. Sundling's initial use of controlled substance, and even more serious concerns about his repeated relapses. This record cannot be ignored, and if he returns to a position in which he has access to drugs, the danger will always remain that he will once again violate the law, professional standards, and good judgment. Despite the repeated failure of various forms of treatment in Dr. Sundling's past, he is able to articulate reasons for believing, or at least hoping, that the treatment he received through the Talbott Recovery System will be effective. Also in Dr. Sundling's favor is the absence from the record of any suggestion that his abuse of drugs has caused harm to any patient, though this is not to say that it did not and could not happen. This allows me to determine that the risk to public safety of granting one more strictly controlled chance to Dr. Sundling is relatively low; if the record were otherwise, and contained any evidence at all that patient welfare had suffered due to his impairment, the balance would be swung decisively against him. That concern aside, the public has an interest in receiving services from especially able, experienced and knowledgeable professionals, and this interest supports Dr. Sundling's personal desire to return to gainful employment. The evidence suggests that Dr. Sundling is not only competent, but above average in ability. If this is true, and nothing in the record except Dr. Sundling's addictive behavior suggests otherwise, the public interest will be served by the services of such a medical professional. Both the public's interest and Dr. Sundling's interest will be served if Dr. Sundling can return to medical practice, and remain unimpaired by drug dependency or abuse.

On balance, the grant of some form of strictly limited license or permit is appropriate. A temporary educational permit would have the advantages of being limited, both in duration and in scope of practice, of requiring that Dr. Sundling's practice be performed under supervision, and of ensuring that Dr. Sundling will not be permitted to prescribe narcotics or other controlled substances. A temporary educational permit should allow Dr. Sundling to accept and perform all necessary duties of the fellowship at DePaul Hospital. The additional requirement of participation in the Impaired Professionals Procedure would be appropriate, to protect the public, to continue to rehabilitate the applicant, and to comply with the limitation on the applicant's Michigan license that he "participate in the Medical Society's impaired physicians program in Applicant's state of employment."

For these reasons I recommend that the Board grant Dr. Sundling a temporary educational permit which is limited in its duration, in its scope of practice, and by requiring participation in the Impaired Professionals Procedure.

Dated February 8, 1991.



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing